

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

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|-----------------------|---|--------------------------|
| CHRISTOPHER BUCHANAN, |) | |
| |) | |
| Claimant-Below, |) | |
| Appellant, |) | |
| |) | |
| v. |) | C.A. No. N22A-04-001 CLS |
| |) | |
| WASTE MANAGEMENT, |) | |
| |) | |
| Employer-Below, |) | |
| Appellee. |) | |
| |) | |

Date Submitted: August 8, 2022
Date Decided: November 9, 2022

Upon Appellant's Appeal from the Order of the Industrial Accident Board.
AFFIRMED.

ORDER

Sean P. Gambogi, Esquire, Kimmel, Carter, Roman, Peltz & O'Neill, P.A.,
Newark, Delaware, 19702, Attorney for Claimant Below-Appellant.

Vance E. Davis, Jr., Esquire, Elzufon, Austin & Modell, P.A., Wilmington,
Delaware, 19899, Attorney for Employer-Below/Appellee, Waste Management.

SCOTT, J.

INTRODUCTION

Before this Court is Appellant Christopher Buchanan's ("Mr. Buchanan") appeal from the decision of the Industrial Accident Board ("Board"). The Court has reviewed the parties' submissions. For the following reasons, the Board's decision is **AFFIRMED**.

BACKGROUND

On December 24, 2002, Mr. Buchanan was working for Waste Management ("Employer") when he sustained injury caused by a tractor trailer knocking him off the back of a truck. Following the work accident, Mr. Buchanan lumbar spine was fused from S1 to L2. The first fusion occurred on March 15, 2006 when Dr. Antoniadis performed a L5-S1 fusion. Dr. Kalamchi then expanded the fusion to L4-L5 in 2017 and then in 2018, expanded the fusion to L3-L4. On September 17, 2019, Dr. Eskander expanded the fusion to the L2-L3 level.

After Mr. Buchanan's final fusion surgery in 2019, he was referred the physical therapy to address the lumbar spine. He began physical therapy on January 6, 2020 and stopped treatment on January 20, 2020. Mr. Buchanan claims he discontinued treatment because a physical therapist told him his problems would be better addressed by a hip specialist.

On February 20, 2020, Mr. Buchanan presented to Dr. John Rowlands, M.D. Mr. Buchanan indicated on his intake form that he was experiencing left hip pain. Dr. Rowlands treated Mr. Buchanan with lumbar spine injections.

On February 25, 2021, Mr. Buchanan presented to Dr. Mark Eskander, M.D. and notified him of his left hip pain. Dr. Eskander, specializing in the spine, referred Mr. Buchanan to Dr. Matthew Voltz M.D., a hip specialist, for the evaluation of the possibility of hip injections.

On March 2, 2021, Mr. Buchanan presented to Dr. Voltz and described his hip pain as a graduate onset injury since his last lumbar fusion in September 2019. Dr. Voltz ordered an MRI of Mr. Buchanan's left hip. The MRI revealed evidence of a labrum tear and hamstring tendinopathy and no evidence of osteoarthritis.

On March 9, 2021, Mr. Buchanan returned to Dr. Voltz and Dr. Voltz noted the MRI revealed a labrum tear and diagnosed him with a left hip strain. Dr. Voltz offered Mr. Buchanan treatment by both medication and injection and Mr. Buchanan originally declined treatment. However, On July 7, 2021, Mr. Buchanan underwent a steroid injection to the left hip.

On August 4, 2021, Mr. Buchanan presented to Dr. Rubano reporting hip pain for two years. Dr. Rubano recommended a left total hip replacement surgery, and that surgery was performed on December 3, 2021.

On December 28, 2021, Mr. Buchanan's medical expert, Dr. Dellose, examined him. Dr. Dollose's records indicate an inaccurate description of the work injury and incorrectly reports Mr. Buchanan underwent physical therapy for his hips.

On January 4, 2022, Dr. Schwartz evaluated Mr. Buchanan and opined the total left hip replacement was not reasonable, necessary, or related to the work injury. Mr. Buchanan told Dr. Schwartz he had hip pain since December 2002, and when informed that the medical records indicated that was not reported, Mr. Buchanan stated he told all of his physicians about the hip pain.

On January 25, 2022, Dr. Dellose testified on Mr. Buchanan's behalf and stated he examined Mr. Buchanan one time after the hip replacement surgery occurred. Dr. Dellose admitted he was unfamiliar with the circumstances of the work accident, and he was unsure whether physical therapy was for the back or hip. Dr. Dellose opined his findings to a research article and Dr. Rubano's August 4, 2021 medical record. He did not review any other medical records. Additionally, Dr. Dellose agreed the February 20, 2022, intake form was the first time Mr. Buchanan's hip was referenced in the medical records and agreed no referral had been made to a hip specialist. Dr. Dellose further contended Dr. Rubano listed incorrect dates for Mr. Buchanan's surgeries. Dr. Dellose was unsure why Dr. Rubano believed Mr. Buchanan completed physical therapy for his hips and Dr. Dellose did not believe Mr. Buchanan's hip was injured at the time of the original work accident.

On February 17, 2022, Dr. Schwartz testified on behalf of Employer. Dr. Schwartz testified that he and Dr. Dellose agreed the left hip MRI did not show osteoarthritis. He testified Mr. Buchanan did not complete physical therapy for the hip. Further he testified medical records do not document if the hip injection was effective and Dr. Rubano did not document the hip injection occurred.

Dr. Schwartz testified that Mr. Buchanan had an L5-S1 fusion in 2006. He testified that an L5-S1 fusion would place more strain on an individual's hips than a fusion at a higher level; yet, there were no hip complaints by Mr. Buchanan nor any objective evidence of hip pathology when Dr. Schwartz examined Mr. Buchanan nine years after the L5-S1 surgery on October 14, 2015. Dr. Schwartz testified that the MRI of Mr. Buchanan's left hip showed evidence of a labrum tear, which presents as an acute injury rather than the slow progression of symptoms over time. His opinion was supported by the fact that Dr. Voltz, the first hip specialist to examine Mr. Buchanan, diagnosed a hip strain. Mr. Buchanan's treatment with Dr. Voltz in March of 2021 is the first-time medical records document a gait disturbance or problems traversing stairs.

Dr. Schwartz reviewed the article relied upon by Dr. Dellose and testified that it cautioned physicians who are treating a patient with lumbar spine injuries that fusions may increase the risk of hip degeneration and they should be vigilant of the

risk. Dr. Schwartz testified that the article was not relevant to this case because there was no slow onset of symptoms, but an acute presentation of symptoms.

Dr. Schwartz testified Mr. Buchanan's hip injury was unrelated to the work accident because there was no arthritis in the left hip and the timing of the complaints correspond to an acute injury, not a degenerative injury.

At the February 25, 2022 Hearing, Mr. Buchanan alleged that the physical therapy from January 6, 2020 through January 20, 2022 involved treatment for his hips and was discontinued because it was not helping his hips. There was no medical evidence to corroborate this testimony and neither Dr. Schwartz nor Dr. Dellose testified regarding these records.

Mr. Buchanan testified that he informed Dr. Schwartz and Dr. Eskander he had hip pain since 2002 but did not tell any of his other doctors.

The Board issued a Decision on March 21, 2022 ruling in favor of the Employer. The Board stated Dr. Schwartz was the more persuasive medical expert and found that Mr. Buchanan's fusions did not aggravate his left hip or cause it to become symptomatic. The Board ruled that timing of Mr. Buchanan's hip complaints and the findings of the diagnostics supported Dr. Schwartz' opinion that the Mr. Buchanan's hip injury occurred acutely.

This appeal follows the Board's Decision on March 21, 2022.

STANDARD OF REVIEW

On appeal from the Industrial Accident Board, the Superior Court must determine if the Board's factual findings are supported by substantial evidence in the record and free from legal error.¹ In reviewing the actions of the agency, the Court is required “to search the entire record to determine whether, on the basis of all the testimony and exhibits before the agency, it could fairly and reasonably reach the conclusion that it did.”² “Therefore, every part of the record before an administrative agency which is necessary to a review of its decision must be made part of the record brought before this Court.”³ The Court does not “weigh evidence, determine questions of credibility or make its own factual evidence findings.”⁴

DISCUSSION

The only issue before this Court is whether there is substantial evidence to support the Board's finding. The Board may adopt the opinion testimony of one expert over another; and that opinion, if adopted, will constitute substantial evidence for purposes of appellate review.⁵ Similarly, the Board may accept or reject an

¹ *Bedwell v. Brandywine Carpet Cleaners*, 684 A.2d 302, 304 (Del. Super. 1996) (citing *General Motors Corp. v. Freeman*, 164 A.2d 686, 688 (Del. 1960)).

² *Nat'l Cash Register v. Riner*, 424 A.2d 669, 674–75 (Del. Super. 1980).

³ *Perrine v. State*, 1994 WL 45341, at *1 (Del. Super.) (citing *Henry v. Dep't of Labor*, 293 A.2d 578, 581 (Del. Super. 1972)).

⁴ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 67 (Del. 1965).

⁵ *Bullock v. K-Mart Corp.*, 1995 WL 339025, at *3 (Del. Super. May 5, 1995).

expert's testimony in whole or in part⁶ and the Board may give substantial weight to the treating physician's opinion, it is not bound to follow the treating physician's opinion.⁷

Here, the Board identifies why it chose Dr. Schwartz's testimony over Dr. Dellose. The Board did so for the following reasons: (1) Dr. Schwartz's reasoning supporting his opinions was more convincing; (2) Dr. Dellose based much of his opinion on the documented opinions of Dr. Rubano and on an article providing additional support to Dr. Rubano's theory, which theory was not found applicable to this case; (3) Dr. Dellose could not support his conclusion that the hip injections were effective, such conclusion was inconsistent with Mr. Buchanan's report about its effectiveness; and (4) Dr. Dellose testified Mr. Buchanan's tears resulted from degeneration, which is inconsistent MRI imaging and the onset of pain was more consistent with acute injury. Ultimately, the Board found for Dr. Schwartz's testimony most convincing because the presentation of complaints was more consistent with acute onset, rather than a correlation between Mr. Buchanan's hip pain and his spinal fusions. The Court finds, after reviewing all the testimony and

⁶ *Turbitt v. Blue Hen Lines, Inc.*, 711 A.2d 1214, 1215 (Del. 1998).

⁷ *Wyatt-Helie v. Platex Apparel*, 2006 WL 2904459, at *3 (Del. Super. Sept. 6, 2006).

exhibits before the agency to render its decision, the Board's conclusion was supported by substantial evidence.

CONCLUSION

For the foregoing reasons, the Board's decision is **AFFIRMED**.

/s/ Calvin L. Scott

Judge Calvin L. Scott, Jr.